

THE HONORABLE RICHARD A. JONES

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

DAVID WILLIAMS, et al.,
Plaintiffs,

v.

FEDERAL DEPOSIT INSURANCE
CORPORATION, et al.,
Defendants.

Master File No. 09-504RAJ

ORDER

The court held a status conference on October 8, 2009, to address issues raised in the parties' joint status report (Dkt. # 16). This order memorializes the court's oral rulings.

First, though post-answer Fed. R. Civ. P. 12(b) motions are technically untimely, the court will nonetheless consider the issues raised in such a motion via another Rule, if necessary. For example, a post-answer Rule 12(b)(6) motion to dismiss for failure to state a claim can be treated as a Rule 12(c) motion for judgment on the pleadings, and a post-answer Rule 12(b)(1) motion to dismiss for lack of subject matter jurisdiction can be considered under Rule 12(h)(3). *See, e.g., Augustine v.*

1 *United States*, 704 F.2d 1074, 1075 n.3 (9th Cir. 1983). Thus, the court will not
2 consider any Defendant's answer as a bar to filing a motion to dismiss.

3 Second, the court stays discovery while the Rule 12 motions are pending, in
4 order to allow the Defendants an opportunity to challenge the legal sufficiency of the
5 Plaintiffs' allegations without facing potentially unnecessary discovery. *See Rutman*
6 *Wine Co. v. E.&J. Gallo Winery*, 829 F.2d 729, 738 (9th Cir. 1987). On the record
7 before the court, the court has no basis to conclude that discovery would be relevant or
8 necessary to the Plaintiffs as they compose their opposition. Defendants' motions to
9 stay (Dkt. ## 18, 21) are GRANTED.

11 Third, the parties agreed to a briefing schedule for all Defendants' motions to
12 dismiss, including those motions (Dkt. ## 17, 20) that have already been filed.
13 Opening briefs must be filed no later than October 22, 2009. Plaintiffs' oppositions
14 are due December 1, 2009. Defendants' reply briefs are due December 16, 2009.¹
15 The motions to dismiss (Dkt. ## 17, 20) that have already been filed shall be
16 RENOTED for December 16, 2009. Oral argument on the motions to dismiss will be
17 heard on January 22, 2010.

18 All other disputes referenced in the joint status report are either moot or
19 premature.
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25 ¹ The briefing on the motion to dismiss that will be filed by Defendant Federal Deposit
26 Insurance Corporation (as receiver) will depart from the page limits set by the Local Rules.
The opening and opposition briefs may not exceed thirty-six pages in length, and the reply
brief may not exceed eighteen pages.

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2 This case is set for trial on July 12, 2010. A scheduling order setting related
3 dates is forthcoming.
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5 DATED this 8th day of October, 2009.
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10 The Honorable Richard A. Jones
11 United States District Judge
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